87-2116

No. 87 ___

Supreme Court, U.S.
FILED
JUN 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JAMES H. GILBERT,

Petitioner,

v.

OFFICE OF BAR COUNSEL OF THE DISTRICT OF COLUMBIA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

JAMES H. GILBERT
7010 Exeter Road
Bethesda, Maryland 20814
(301) 652-7406
(301) 984-8588
Pro Se

PRESS OF RAM PRINTING, HYATTSVILLE, MD 20781 (301) 864-6662

QUESTIONS PRESENTED

1. Whether petitioner was afforded due process when he was reciprocally disbarred without the opportunity to be heard or to present evidence to the Board of Professional Responsibility or to a hearing committee.

2. Whether an opinion in a civil suit in 1970 that petitioner was responsible for his wife's death would be sufficient to warrant the denial of bar admission in 1983 when complete rehabilitation was otherwise established by clear and convincing evidence and there was subsequently developed exculpatory evidence that contradicted that opinion.

3. Whether a finding that an omission was material to the issue of rehabilitation was predicated on an impermissible finding that petitioner was involved in the death of his wife.

4. Whether exculpatory evidence should have been permitted to establish that an omission on a bar application was unintentional and immaterial when inculpatory evidence was allowed in order to prove that the omission was intentional and material.

5. Whether a person can be in violation of DR 1-102 (A) (1) or (4) for conduct occurring prior to his becoming a lawyer.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
CONCLUSION	12
APPENDIX A	
Opinion of the District of Columbia Court of Appeals, March 7, 1988	1a
APPENDIX B	
Opinion of the Court of Appeals of Maryland, October 6, 1986	13a
APPENDIX C	
Opinion of the Court of Appeals of Maryland, August 4, 1986	31a
Appendix D	
Testimony of Milton Parker	38a

TABLE OF AUTHORITIES

Cases	Page
In re James H. Gilbert, Respondent No. 86-1614	4
Attorney Grievance Commission v. *Gilbert* 515 A.2d 454 (1986)	12
In re Application of James G. 296 Md. 310, 462 A.2d 1198 (1983)	4
Schware v. *Board of Bar Examiners* 353 U.S. 232, 77 S. Ct. 752, 1 L.Ed. 2d 796 (1957)	10
United States v. *Tucker* 404 U.S. 443, 92 S. Ct. 589, 30 L. Ed. 2d 592 (1972)	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-____

JAMES H. GILBERT,

Petitioner,

v.

OFFICE OF BAR COUNSEL OF THE DISTRICT OF COLUMBIA

Respondent.

The Petitioner, James H. Gilbert, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the District of Columbia Court of Appeals entered in this proceeding on March 7, 1988.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals appears as Appendix "A".

JURISDICTION

The opinion and judgment of the District of Columbia Court of Appeals was entered on March 7, 1988. As no motion for reconsideration was filed, that decision became the decision terminating review. This Petition for a writ of certiorari will have been filed within ninety days of March 7, 1988. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment 14, § 1, provides:

Citizenship Rights Not to be Abridged by States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State therein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DISCIPLINARY RULES INVOLVED

D.C. Bar R. XI, § 18 (5) provides:

> Discipline to be imposed. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of paragraph (3) above, this Court shall impose the identical discipline unless Bar Counsel or the attorney demonstrates, or the Court finds upon the face of the record upon which the discipline is predicated, that clearly:
>
> (a) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (b) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
>
> (c) The imposition of the same discipline by the Court would result in grave injustice; or

(d) The misconduct established warrants substantially different discipline in this jurisdiction; or

(e) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

If the Court determines that any of those elements exists, the Court shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

DR 1-101(A) provides:

A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

DR 1-102(A) (1) and (4) provide:

A lawyer shall not:

(1) Violate a Disciplinary Rule.

. . .

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

STATEMENT OF THE CASE

On October 6, 1986, Petitioner was disbarred by the Court of Appeals of Maryland for violating DR 1-101(A) and DR 1-102 (A)(1) and (4) for failing to disclose a civil lawsuit on his application for admission to the Bar of Maryland in May, 1980. As a result, the District of Columbia Court of Appeals imposed reciprocal discipline on March 7, 1988, denying petitioner the opportunity to present evidence to a hearing committee or to the Board of Professional Responsibility.

Petitioner had disclosed on his application to Maryland that he had been arrested and indicted several times in connection with the death of his first wife, which occurred on June 4, 1967. However, he failed to disclose a 1970 civil suit, *Gilbert* v. *Bankers Life and Casualty Company*, in which he was the unsuccessful plaintiff in a lawsuit to recover the insurance proceeds on the life of his wife. Petitioner accurately and truthfully completed his application for admission to the District of Columbia Bar and was admitted after examination on June 19, 1981, after revealing that he had been involved in serious criminal activity in 1967. It is uncontested that he did not in any way fail to disclose any requested information in connection with either his written application or his interview with members of the Committee on Admissions of the District of Columbia. Subsequent to the civil suit, on March 13, 1972, he was acquitted of conspiring with his sister to murder his wife when his sister was granted a directed verdict.

Despite petitioner's revelations that he had been involved in serious criminal activity in 1967, he was admitted to practice in Maryland on September 12, 1983 after it was held that he had demonstrated by clear and convincing evidence that he was completely rehabilitated and possessed the requisite moral character to practice law. *See In re Application of James G.*, 296 Md. 310, 462 A.2d 1198 (1983), Appendix "C".

The lower court admitted and considered evidence in *Bankers Life*, and came to the conclusion that the strength of the evidence against him provided petitioner with a motive to conceal. The supposed strength of the evidence of the 1970 civil suit also served to prove the materiality of the omission to the issue of rehabilitation.

The Court's ruling had the practical affect of finding petitioner involved in a murder which occurred some nineteen years earlier with a sentence of depriving petitioner of his life's chosen profession. However, testimony which would have tended to show a lack of guilt and which cast doubt on testimony in *Bankers Life* was improperly excluded.

Before the District of Columbia Court of Appeals, petitioner challenged both the propriety of imposing reciprocal discipline without a hearing, as well as the underlying findings of the Maryland Court of Appeals. Petitioner now asserts that it was error for the District of Columbia to adopt findings of Maryland as to misconduct. He further asserts that even if Maryland's finding of misconduct were not disturbed, that it was a violation of his right to due process to be disbarred without being afforded hearings before any hearing committee or the Board of Professional Responsibility.

I. PETITIONER WAS DENIED DUE PROCESS WHEN HE WAS RECIPROCALLY DISCIPLINED WITHOUT THE OPPORTUNITY TO BE HEARD OR TO PRE-PRESENT EVIDENCE.

The entire issue in Maryland should have been decided on the question of the *relative* importance of petitioner's disclosure of his criminal charges in his wife's death versus the omission of the civil case on the application. Were the facts in the civil case viewed in isolation, there may have been a stronger case for finding that the omitted facts were material and that they were deliberately omitted. However, if the exact same facts were disclosed in the criminal case, there would be neither a material omission nor a motive to conceal. The very same weighing of the relative importance and quantity of facts in the criminal case versus the civil case also goes to the issue of degree of

discipline warranted if actual misconduct were to be found. For example, if there were a total absence of facts contained in the criminal case and there were abundant damaging facts in the civil case, the finding of misconduct would be extremely likely. Correspondingly, the gravity of the disciplinary sanction should be great. On the other hand, if the scales tipped ever so slightly toward misconduct, those facts should be considered in deciding the fair and appropriate punishment.

It was error and a denial of due process for both the District of Columbia and Maryland Courts to have totally disregarded the concept of relativity in both the misconduct and the punishment analyses. Petitioner admitted to Maryland that he had been indicted in connection with his wife's death "at least three times." The question of what is material is a legal one and there is no need to defer to Maryland, other than in cases of determining credibility. The undisputed facts are that petitioner fully disclosed that he was at one time a suspect in his wife's death. The fact that he was a plaintiff in a civil suit, without more, surely is not material.

The fundamental errors of both the District of Columbia and Maryland were that the issue of materiality could be determined solely by looking at the civil case and that the issue of deliberateness can be determined by using hindsight as to what the Character Committee did, rather than what they would have been expected to do. However, in viewing petitioner's state of mind *at the time he completed his application*, it would be absurd to suggest that he thought that the Character Committee would go to the files of the civil suit and not go to the files of the criminal case.

This becomes even more suspect when it is considered that the civil case was not appealed. The only transcript of

the civil suit was contained in the *criminal* files and was ordered solely for use in the upcoming criminal trial. It has been stated countless times and has never been disputed that each and every fact contained in the civil case and files was also contained in the criminal files. Therefore, at the time of the completion of the application in May, 1980, petitioner could not possibly have in any way imagined that the Character Committee would examine *neither* set of files. Even more unlikely would be the thought that if they were to examine only one set of files that it would be the civil and not the criminal files.

Petitioner did disclose that he had been involved in civil litigation in question 9 (c) and (d) of the Maryland application. Yet he answered in the negative to question 10 as to whether he had ever been involved in any civil litigation. Clearly the two are inconsistent and should have alerted the committee that one of the answers was incorrect. In fact, the discrepancy did alert Constance Putzel, Esquire, a member of the Character Committee, who was advised by petitioner that his answer to question 10 was inaccurate and that he had been involved in lawsuits.

It should also be noted that he is not being charged for failure to disclose the facts surrounding the criminal charges. In the Findings of Fact of Judge Thieme of the Anne Arundel Circuit Court, which was adopted by the Maryland Court of Appeals on page 7, it is stated,

> "This Court is persuaded by Respondent's assertion that when filling out his application and throughout the three-year inquiry, he and every panel member he confronted were preoccupied by his criminal charges. This preoccupation, no doubt, is to blame for the scant attention paid to Respondent's history of civil litigation. Once confronted with the instant nondisclosure, *Gilbert responded with the candor and frankness with which he had previously*

> *discussed his criminal involvement.* The unfortunate reality, however, is that this candor came in response to a charge of misrepresentation, it was not offered in lieu of that misrepresentation." (Emphasis added).

At page 4 of the same Findings of Fact, Judge Thieme found that, ". . . During that interview (the personal interview with Constance Putzel of the Character Committee) Gilbert indicated that he had been involved 'in law suits' but disclosed only *May Dept. Stores* v. *James Gilbert*, an $88.00 collection case included in answer to Question 9 of the written application. . ."

In the *Opinion and Recommendation of the Character Committee for The Third Judicial Circuit*, dated March 4, 1981, on page one, the reason for petitioner's not expounding on the facts surrounding his wife's death or the civil case can be found, ". . . According to the records and according to copies of orders received after the Panel Hearings, parts of the record have now been expunged and *therefore cannot be considered at this time . . .*" Whether or not that was the correct statement of the law, it is apparent that the committee did not believe that it should properly consider expunged cases. The records were readily available and were not even expunged at the time the application was completed. However, to blame the petitioner for not overruling the committee and inserting evidence which they had systematically chosen to exclude would itself be a violation of due process.

The "offense" of omitting information of a civil suit while including the more all-encompassing criminal case occurred in 1980, before petitioner was an attorney in *any* jurisdiction. It was followed by seven years of his honorably discharging his duties as a member of the District of Columbia Bar. Maryland would have an interest in disbar-

ring petitioner no matter how slight the offense, as it involved an original admission. The District of Columbia, on its own original admission case, may feel the same way. However, to defer to Maryland, which has different interests and obviously views the case from an entirely different perspective, without so much as an inquiry, is to deny due process.

Petitioner has argued that he was subsequently exonerated in the criminal trial of March, 1972. In the instant opinion, the Court at page 3 makes a fatal error in stating that, *after* the criminal trial, "Gilbert *then* sought, as beneficiary, to recover the proceeds of the insurance policies." (Emphasis added). It is of crucial importance to note that the civil trial occurred in November, 1970 and that the criminal trial occurred in March of 1972, during which the State of Maryland introduced evidence that directly and conclusively contradicted the testimony of one William McColligan and the findings of Judge Proctor in the civil suit. The chronology, as well as the actual facts, makes the civil suit and its findings much less noteworthy in the large picture. The chronology is another reason why the criminal files were much more comprehensive and contained each and every fact contained in the civil file, including the findings of Judge Proctor.

The entire proceedings in both the District of Columbia and Maryland were done with a conclusion in mind first, which was then followed by facts attempting to support them. For if any damaging fact were examined and it was then asked whether the fact was also contained in the criminal files and if it would be more likely found in the criminal files, the civil suit would not have been the "answer" to the reason for petitioner's "erroneous admission."

The testimony of William McColligan, an employee of Bankers Life and Casualty Company, initially appeared damaging in 1970. Whereas the proffered testimony of Milton Parker, Appendix "D", which was extremely favorable to petitioner, was improperly excluded. Yet, as McColligan's supervisor, Parker's testimony went to the very issue of the credibility of McColligan.

II. IT WOULD HAVE VIOLATED PETITIONER'S RIGHT TO DUE PROCESS IF HE WERE DENIED ORIGINAL ADMISSION BASED SOLELY ON THE EVIDENCE IN THE CIVIL TRIAL.

The weight of evidence in *Bankers Life* standing alone was not sufficient to warrant denial of original admission to Maryland. Hence, *Bankers Life* was not proven to be material to the issue of rehabilitation. Should it appear that the record contains evidence sufficient to deprive petitioner of his right to practice law, it is only because he has been deprived of the Constitutionally-protected right to offer witnesses in his own behalf. It has been firmly established that due process is required in the admission of new applicants to the Bar.

In *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1. L.Ed. 2d 796 (1957), the Supreme Court stated at pp. 238, 239,

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

It went on to say in Footnote 5 on p. 239,

> "[5]We need not enter into a discussion whether the practice of law is a 'right or privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that

> a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. . ."

Schware, supra, involved an application for admission to the New Mexico Supreme Court, which was denied by the State court on the basis of the applicant's previous affiliation with the Communist Party. As Justice Frankfurter pointed out in his concurring opinion, the New Mexico Supreme Court unequivocally held the Communist Party affiliation to be a factor without which the application could not have been denied. The applicant's admission was ordered when it was found that the unwarranted legal conclusion finding him unfit to practice was in violation of his right to due process.

In seeking to determine whether an applicant for admission committed a murder in 1967, there would be no logical or rational reason to limit the inquiry to facts established in a 1970 civil trial. It therefore follows that to come to a conclusion of guilt in 1983, without allowing any other testimony whatsoever, would violate petitioner's right to Due Process guaranteed under the Fourteenth Amendment to the United States Constitution.

If *Bankers Life* showed petitioner to be innocent, its omission from the application would be immaterial, as rehabilitation has already been convincingly demonstrated. If evidence of guilt were inconclusive, it could not be the sole basis for denying admission and would also be immaterial. Only if the evidence of guilt was characterized as strong and reliable could the issue of rehabilitation be materially affected. Therefore, to conclude materiality is to conclude guilt.

III. THE DECISION BELOW IS IN DIRECT CONFLICT WITH THE DECISION OF THIS COURT.

United States v. *Tucker*, 404 U.S. 443, 92 S. Ct. 589, 30 L. Ed. 592 (1972) stands for the proposition that a sen-

tencing judge, who has virtually boundless discretion in considering information in sentencing, must still afford the defendant the Constitutional safeguards of using reliable information.

The Court below stated that it was not concerned with the issue of guilt or innocence and that it was not concerned with the ". . . veracity of a witness in a trial occurring sixteen years earlier . . ." *Attorney Grievance Commission* v. *Gilbert*, 515 A.2d, 461 (1986). It is therefore understandable that the reliability of the evidence was not scrutinized at all. Accordingly, petitioner did not receive the benefit of the safeguards of the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of Maryland.

Respectfully submitted,

JAMES H. GILBERT
7010 Exeter Road
Bethesda, Maryland 20814
(301) 652-7406
(301) 984-8588
Pro Se

APPENDIX

DISTRICT OF COLUMBIA
COURT OF APPEALS

APPENDIX A

FILED MAR - 7 1988

Clerk

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 86-1614

IN RE JAMES H. GILBERT, RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals

(Argued December 1, 1987 Decided March 7, 1988)

David Epstein, with whom *R. Hale Foote* was on the response to the order to show cause, for respondent.

Fern Flanagan, Assistant Bar Counsel at the time this case was argued, with whom *Thomas E. Flynn*, Bar Counsel, and *Wallace E. Shipp, Jr.*, Deputy Bar Counsel, were on the reply to the response of respondent to the show cause order, for petitioner, the Office of Bar Counsel.

Before PRYOR, *Chief Judge*, and NEWMAN and BELSON, *Associate Judges*.

PER CURIAM: In this professional responsibility case, we must determine whether respondent James H. Gilbert should be reciprocally disciplined in this jurisdiction, pursuant to District of Columbia Bar Rule XI, § 18 (5), as a consequence of his disbarment by the Court of Appeals of Maryland on October 6, 1986. *Attorney Grievance Comm'n of Maryland v. Gilbert*, 307 Md. 481, 515 A.2d 454 (1986). The Board on Professional Responsibility

A true Copy.
Test:
RICHARD B. HOFFMAN
Clerk of the District of Columbia Court
of Appeals

BY
DEPUTY CLERK

has recommended that reciprocal discipline be imposed and that, accordingly, respondent be disbarred. In opposition to that recommendation, respondent offers four reasons, which correspond to those listed in Rule XI, § 18 (5)(b)-(e), why this court should not impose discipline identical to that imposed by the Court of Appeals of Maryland. We conclude that respondent should be reciprocally disciplined and, thus, disbarred from the practice of law in the District of Columbia.

The basis for this reciprocal discipline proceeding is respondent's disbarment in Maryland for violations of DR 1-101(A) and DR 1-102(A)(1) and (4).[1] The factual circumstances surrounding respondent's violations are reported at length in *Attorney Grievance Comm'n of Maryland v. Gilbert, supra.* As pertains to this proceeding, the factual background is as follows: in May 1980, respondent completed his application for admission to the Maryland Bar. Included in the application was a question (Question 10) which requested the following information:

> a complete list of all suits in equity, actions at law, suits in bankruptcy or other statutory proceedings, matters in probate, lunacy, guardianship, and every other judicial or administrative proceedings of every nature and kind to which

---

[1] DR 1-101(A) states:

> (A) A lawyer is subject to discipline if he has made a materially false statement in, or he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

DR 1-102(A)(1) and (4) state:

> (A) A lawyer shall not: (1) Violate a Disciplinary Rule. . . . (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

> [the applicant is] or [was] ever . . . a party: (If 'None' so state).

In response to the question, respondent answered "[n]one." By submitting a negative answer, respondent in effect failed to disclose the fact that in 1970 he had been involved as a plaintiff in a civil suit brought against Bankers Life and Casualty Company.

After passing the Maryland Bar Examination, respondent underwent the character investigation process —the purpose of which was to determine whether his moral character made him fit for admission to the Maryland Bar. The investigation of respondent included a hearing by the Character Committee of the Third Judicial Circuit. As he had done on the admission application, respondent failed during the investigation process to disclose any information revealing his prior involvement in the *Bankers Life* action.[2]

The 1970 *Bankers Life* suit arose out of respondent's attempt to recover proceeds from two insurance policies which had provided coverage on his wife's life. The effort to collect on the insurance policies came after respondent's wife was murdered in June 1967. Respondent and his sister were arrested in connection with the killing and indicted for murder and conspiracy to commit murder. However, after respondent's sister was acquitted of the charges in March 1972, the state voluntarily dismissed the charges against respondent. Gilbert then sought, as a beneficiary, to recover the proceeds of the insurance policies. Those proceeds totalled $110,000.

---

[2] In the course of respondent's subsequent disbarment proceedings in Maryland, that state's court of appeals noted that "Gilbert never provided the information about *Bankers Life* during the admission process." *Attorney Grievance Comm'n, supra*, 307 Md. at ——, 515 A.2d at 460.

Bankers Life and Casualty Company refused to make payment, contending that respondent had intentionally caused his wife's death. Respondent, in turn, filed suit against Bankers Life. Following a non-jury trial, the court denied respondent's claim. In making its finding, the trial court declared "the evidence [to be] overwhelming that [respondent] intentionally caused the death of his wife in order to reap the harvest, namely, the proceeds of these two life insurance policies . . . ." *Attorney Grievance Comm'n, supra*, 307 Md. at ——, 515 A.2d at 456.

Respondent's nondisclosure of the *Bankers Life* civil suit never became known to Bar authorities during the admission process. The Character Committee was aware, however, not only that respondent had prior criminal convictions but also that he had been indicted for the murder of his wife.[3] Nevertheless, and notwithstanding

---

[3] In fact, during the course of the admission process, there was a "concentration on [respondent's] criminal record." *Id.* at ——, 515 A.2d at 458. That record, apart from the matter of the death of his wife, was summarized in the Report of the Board on Professional Responsibility as follows:

> During a six month period in 1967, when he was just beginning law school, Gilbert was involved in a series of criminal acts in Maryland. He was charged with conspiracy to commit forgery, forgery and uttering, murder and accessory to commit murder, homocide [sic] and assault. He entered a nolo contendere plea to the conspiracy to commit forgery charge and received a suspended sentence. He was also found guilty of six counts of forgery and uttering and was sentenced to imprisonment for a period of 20 months to 5 years. He was later found not guilty of murder charges arising from a gas station robbery but entered a nolo contendere plea to simple assault for which he received a suspended sentence. None of these arrests, convictions or sentences is directly involved in this case.

a unanimous recommendation by a Character Committee of the Maryland State Board of Law Examiners (the "State Board") to deny respondent admission to the Bar, the State Board voted 3-2 to recommend his admission. The Court of Appeals of Maryland, in a divided decision, ordered respondent's "admission after concluding that the evidence was clear and convincing that he was completely rehabilitated and presently possessed good moral character." *Id.* at ——, 515 A.2d 456 (citing *In re Application of James G.*, 296 Md. 310, 462 A.2d 1198 (1983)).

A short time after respondent's admission to the Maryland Bar in 1983, the Maryland Attorney Grievance Commission (the "Commission") became aware of his previous involvement in the *Bankers Life* suit and his failure to disclose that involvement in his bar admission application. The Commission commenced disciplinary proceedings against respondent on the basis that he "had intentionally failed to disclose a material fact by his negative answer to Question 10 of the admission application. . . ." *Id.* at ——, 515 A.2d at 457. Respondent's failure to disclose the information about the civil suit was, the Commission contended, a violation of DR 1-101(A) and DR 1-102(A)(1) and (4). The Circuit Court for Anne Arundel County conducted two evidentiary hearings regarding the alleged violations. That court concluded that

> [Respondent] had intentionally failed to disclose the civil suit; that the information thereby withheld was of material fact; that the Character Committee, the State Board of Law Examiners, and [the Court of Appeals of Maryland] were deliberately deprived of material information; and that [respondent] had thereby

> violated DR 1-101(A) and DR 1-102(A)(1) and (4).

Id.

The Court of Appeals of Maryland refused to disturb either the factual findings or the ultimate determination of the circuit court. In its 1986 decision, the court of appeals stated that it was "unable to say that [the circuit court's] finding that [respondent] intentionally failed to disclose the *Bankers Life* suit was clearly erroneous." *Id.* at —, 515 A.2d at 458. Moreover, the court of appeals concluded, as did the circuit court, that the *Bankers Life* information which respondent failed to disclose was "material." *Id.* at —, 515 A.2d at 460. The court of appeals also declared that it was "entirely plain" that "the non-disclosure of the civil suit plainly inhibited efforts to assess [respondent's] present moral character fitness to practice law." *Id.* Finally, citing to the "gravity of [the] misconduct, and the absence of any compelling extenuating circumstances," the court ruled that respondent should be disbarred. *Id.* at —, 515 A.2d at 463.

After receiving notice of the decision in Maryland to disbar respondent, we referred the matter to the Board on Professional Responsibility (the "Board") for a recommendation on whether we should impose reciprocal discipline. The Board determined that none of the extenuating elements set forth in D.C. Bar R. XI, § 18 (5) are present in the instant case.[4] Finding no basis upon

---

[4] Unless one or more of five factors, listed in D.C. Bar R. XI, § 18 (5), is found clearly to exist, members of the District of Columbia Bar who have been disciplined in another jurisdiction are required to be identically disciplined by this court. Section 18 (5) provides:

> Discipline to be imposed. Upon the expiration of 30 days from service of the notice issued pursuant to the provi-

which to recommend against the imposition of identical discipline, the Board has recommended that respondent be disbarred in this jurisdiction.

I

The first argument that respondent presents in opposition to reciprocal disbarment, based on D.C. Bar R. XI, § 18 (5)(b), is that there was an "infirmity of proof" establishing the misconduct at issue. In support of this contention, respondent asserts that the discipline in Maryland was based on the findings made in the *Bankers Life* civil action; however, he maintains, those findings are "contradicted" by the fact that the criminal

---

sions of paragraph (3) above, this Court shall impose the identical discipline unless Bar Counsel or the attorney demonstrates, or the Court finds upon the face of the record upon which the discipline is predicated, that clearly:

(a) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) The imposition of the same discipline by the Court would result in grave injustice; or

(d) The misconduct established warrants substantially different discipline in this jurisdiction; or

(e) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

If the Court determines that any of those elements exists, the Court shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

proceedings against him were dismissed. Furthermore, respondent states, it is improbable that he would intentionally fail to provide information about the *Bankers Life* action when his disclosure of the criminal matter already served to spotlight the entire episode. It would have been self-destructive, the argument goes, to reveal the criminal matter and then attempt to conceal the closely connected civil proceeding. Finally, in further assailing the finding of misconduct, respondent states that he satisfied the Maryland standard for disclosure of information on a bar application, as it is set forth in *In re Application of G.L.S.*, 292 Md. 378, —, 439 A.2d 1107, 1117 (1982).

We find no infirmity in the Maryland court's determination of misconduct. We reiterate that the misconduct at issue is not a homicide, but the intentional nondisclosure on the bar application of information considered to be material. As to the proper weight to be given the findings in the *Bankers Life* action vis-a-vis the results of the criminal proceedings, that is a concern which goes only to the question of whether the nondisclosed information was "material." We agree with the statement by the Court of Appeals of Maryland:

> Also lacking in merit is [respondent's] contention that the finding of materiality in the disciplinary proceedings effectively convicts him of his wife's murder and thus denies him due process of law. Our determination that the nondisclosure was material relates only to [respondent's] fitness to practice law, not to his guilt or innocence.

Attorney Grievance Comm'n, supra, 307 Md. at ——, 515 A.2d at 461. The Maryland disciplinary proceedings did not focus on the ultimate finding in the *Bankers*

Life action. Rather, the Maryland Court of Appeals ruled the *Bankers Life* suit to be material because the civil action brought information to light that would have been "highly relevant" to the assessment of respondent's "moral character fitness to practice law." *Id.* at ——, 515 A.2d at 460. We cannot disagree with the conclusion that the *Bankers Life* information would have been highly relevant. Consequently, we find no fault with the determination of materiality.

Moreover, we are unpersuaded by respondent's challenge to the Maryland court's conclusion that respondent intentionally failed to disclose the information. Respondent argues that he focused attention on the circumstances surrounding the murder charges by disclosing his criminal indictment and that, therefore, any intentional cover-up of the civil action would surely be unsuccessful. We disagree. Respondent stood to benefit if the existence and, in particular, the findings of the civil action were never revealed. The Maryland circuit court noted that respondent "controlled the flow of information during the [Character Committee] hearings." *Id.* at ——, 515 A.2d at 458. Respondent now argues, however, that he could not have hoped to keep the *Bankers Life* action undisclosed. We find this position inconsistent with respondent's failure to mention the civil proceedings even when responding to questions posed during the informal Character Committee proceedings, that virtually invited such a disclosure. *Id.* In short, we are unable to find any infirmity in the determination that the nondisclosure was intentional.

Respondent's final challenge to the determination of misconduct is that he was held to a higher standard of disclosure than was the applicant in *In re Application of G.L.S.*, *supra*. The Maryland Court of Appeals distin-

guished the two cases, and we too are satisfied that respondent disclosed less information than that which was disclosed in *G.L.S.* As with respondent's other two contentions, this last point provides no grounds upon which to question the conclusion of the Maryland court that the actions of respondent constituted misconduct.

II

The second argument that respondent levels against the imposition of reciprocal discipline is made pursuant to D.C. Bar R. XI, § 18 (5)(c). He contends that a "grave injustice" would result if he should be reciprocally disbarred in the District of Columbia because our action would be based on disciplinary proceedings in Maryland which came about, according to him, only as a result of findings in the *Bankers Life* case which are inconsistent with the later dismissal of the criminal charge of murder. We find this argument to be meritless. The Court of Appeals of Maryland disbarred respondent because of his intentional failure to disclose material information on his application to the Maryland Bar rather than because of the findings in the civil case. Our determination, in turn, proceeds on the basis of Maryland's finding of misconduct. We conclude that disbarment of respondent in this jurisdiction would not result in a grave injustice.

III

Respondent argues that disbarment in this jurisdiction is not warranted on the basis of the type of misconduct established in Maryland. We agree instead with the Board on Professional Responsibility that respondent's misconduct would not warrant substantially different discipline if it arose originally in this jurisdiction. The only fully adjudicated case in this jurisdiction that pre-

sented a similar situation was *Carver v. Clephane*, 78 U.S. App. D.C. 91, 137 F.2d 685 (1943), in which the appellant was denied admission to the District of Columbia Bar for making responses on his admission applications which were found to be deceitful. Candid answers would have led the Committee on Admissions and Grievances to investigate findings that Carver had been guilty of misconduct before the United States Patent Office. The exclusion of the respondent in *Carver* from the bar for his failure to be candid on his admission applications is not dissimilar from respondent's disbarment for misconduct involving the intentional nondisclosure of material information during the admission process.[5] Finally, we note that the Maryland court, in considering sanction, found "the absence of any compelling extenuating circumstances." *Attorney Grievance Comm'n, supra*, 307 Md. at ——, 515 A.2d at 463. We believe the misconduct does not warrant substantially different discipline from that imposed in Maryland.

IV

Respondent also argues that his actions in Maryland would not have constituted misconduct in the District of Columbia because this jurisdiction would have required "a clearer showing of intent to make a misstatement." In that we see no basis for disregarding the factual findings made during respondent's disciplinary proceedings in Maryland, we conclude that the Maryland proceedings

[5] The Board on Professional Responsibility observed that it had recommended a sanction of a year and a day in a case arising in this jurisdiction (still pending before this court) in which an applicant was found to have made misrepresentations less serious than Gilbert's in applying for admission to the Maryland Bar. *In re Rosen*, Bar Docket No. 187-85 (Oct. 9, 1986) (D.C.C.A. No. 86-1464).

sufficiently established that respondent had intentionally failed to disclose the *Bankers Life* information. Accordingly, it is

ORDERED that James H. Gilbert be, and hereby is, disbarred from the practice of law in the District of Columbia effective thirty days from the date of this opinion.

So ordered.

APPENDIX B

In The Court Of Appeals Of Maryland

Misc. Docket (Subtitle BV)
No. 6
September Term, 1985

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
v.
JAMES HENRY GILBERT

Murphy, C.J., Eldridge, Cole, Rodowsky, Couch, McAuliffe, Adkins, JJ.

Opinion by Murphy, C.J.

Filed October 6, 1986

STATE OF MARYLAND, ss:

I, ALEXANDAR L. CUMMINGS, Clerk of the Court of Appeals of Maryland, the highest Court of said State, do hereby certify that this is a full and true copy of the opinion, the original of which is on file in the office of said Clerk in the case of *Attorney Grievance Commission of Maryland* v. *James Henry Gilbert*, Misc. Docket (Subtitle BV) No. 6 September Term, 1985

IN TESTIMONY WHEREOF, I have herunto set my hand as Clerk and affixed the seal of the said Court of Appeals of Maryland this 6th day of October, 1986.

/s/ _____
ALEXANDER L. CUMMINGS
Clerk, Court of Appeals of Maryland

Costs Assessed:

Depositions:	
William McColligan (9/27/85)	$ 58.91
Richard Buddeke and Harold Ganss (10/7/85)	46.50
Constance K. Putzel (10/8/85)	74.65
Inquiry Panel Hearing held 12/3/84:	
Attendance Fee	87.00
Findings Preparation	33.00
Transcript	141.00
Trial Judge Hearing held 10/10/85 (transcript)	263.25
Remanded Trial Judge Hearing held on 4/8/86 (transcript)	38.35
Total	$742.66

This case involves a petition for disciplinary action filed by the Attorney Grievance Commission against James Gilbert, a member of the Maryland Bar since 1983. The Commission seeks Gilbert's disbarment for a claimed violation of DR 1-101(A) and DR 1-102(A)(1) and (4) due to his alleged intentional failure to disclose a material fact in his 1980 application for registration as a candidate for admission of the Maryland Bar.[1] Specifically, the non-disclosure was of a civil suit filed by Gilbert in which he unsuccessfully sought, as beneficiary, to recover the proceeds of several life insurance policies procured

---

[1] DR 1-101(A) states:

"(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar."

DR 1-102(A)(1) and (4) provide:

"(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

. . .

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

by him on his deceased wife's life three months prior to her murder.

I.

Prior to his admission to the Maryland Bar, Gilbert was involved in a series of criminal incidents, all of which occurred over a six-month period in 1967. As a result, he was charged with conspiracy to commit forgery, forgery and uttering, murder and accessory to commit murder, homicide and assault. He pled *nolo contendere* to the charge of conspiracy to commit forgery for which in 1968 he received a suspended sentence. He was found guilty of six counts of forgery and uttering arising out of the use of a misappropriated credit card and received a sentence of twenty months to five years incarceration. Shortly after his enrollment in law school, he was arrested on murder and aggravated assault charges arising out of a Halloween night stabbing of a gas station attendant by one of his companions. Gilbert was found not guilty of these offenses; subsequently, he pled *nolo contendere* to simple assault for which he received a suspended sentence. During this same period in 1967, Gilbert was arrested for murder and conspiracy to commit murder in connection with the murder of his wife on June 4, 1967. He was indicted for these offenses, along with his sister, on March 13, 1969. The charges against Gilbert were nol prossed on June 24, 1974, following his sister's acquittal on March 13, 1972.

Gilbert was initially incarcerated without bond until December 1967 and was later imprisoned for twenty-one months from November 1970 to August 1972 upon his convictions for forgery and uttering. As a result, he was unable to continue law school. He resumed his law school studies after his release from incarceration and graduated in 1980. He completed his application for admission to the Bar of Maryland on May 20, 1980. On May 29, 1980, Gilbert filed a petition for the expungement of all records associated with the nol prossed indictment for his wife's murder. The petition was granted on

June 23, 1980. Gilbert successfully passed the July 1980 Bar Examination. Thereafter, the character investigation process was initiated to determine Gilbert's present moral character fitness for admission to the Maryland Bar.

The Character Committee of the Third Judicial Circuit held a hearing on October 21, 1980 to determine whether Gilbert currently possessed the requisite moral character to justify his admission to the Bar. *See* Rule 4 of the Rules Governing Admission to the Bar. The Committee unanimously recommended to the State Board of Law Examiners that Gilbert be denied admission. As authorized by Rule 4 c, the Board conducted its own evidentiary hearing on November 2, 1981; by a 3-2 vote, it concluded that Gilbert had demonstrated his present moral character fitness and recommended that he be admitted.

We considered the matter at a hearing "upon the records made by the Character Committee and the Board." Rule 4 c. A divided Court ordered Gilbert's admission after concluding that the evidence was clear and convincing that he was completely rehabilitated and presently possessed good moral character. *See In re Application of James G.*, 296 Md. 310, 462 A.2d 1198 (1983). In so concluding, we were conscious of Gilbert's difficult life experiences, including the continuous conflict between his parents that culminated in their separation, the birth of a Downs Syndrone child during his first marriage in 1964; and the fact that his first wife had been the victim of a murder in 1967. In arriving at our evaluation of Gilbert's present moral character, we took into consideration the nature of the offenses for which he was convicted; that all his criminal offenses occurred within a six-month period; that the murder charge involving his wife's death was nol prossed; that sixteen years had since passed; that Gilbert had been admitted to the Bar of the District of Columbia in 1981 and had performed as a lawyer without any negative incidents; and that although Gilbert's crimes were serious and involved moral turpitude, he candidly and "readily admitted his responsibility for and his participation in the crimes in which he was involved and his remorse is fully evident and genuine." 296 Md. at 316.

Shortly after his admission to the Maryland Bar, Gilbert's involvement as a plaintiff in a civil suit, not disclosed on his admission application, came to the attention of the Attorney Grievance Commission. That suit was filed by Gilbert on June 4, 1970 in the Circuit Court for Baltimore County to recover $110,000, representing the proceeds from two insurance policies which Gilbert had obtained insuring his wife's life. The insurer had declined to pay the proceeds to Gilbert as beneficiary, contending that he was not entitled to them because he had intentionally caused the death of his wife. At the conclusion of an evidentiary non-jury trial on November 10, 1970, Judge Kenneth Proctor denied Gilbert's claim to proceeds, finding that "the evidence is overwhelming that [Gilbert] intentionally caused the death of his wife in order to reap the harvest, namely, the proceeds of these two life insurance policies, so that he could live, according to his light, happily ever after."

In so concluding, Judge Proctor related in an oral opinion that the evidence showed that three months before his wife's murder, Gilbert obtained the two policies insuring his wife's life. The murder took place at a tourist home operated by Gilbert and his wife. According to Gilbert's sister, Janet, the door buzzer sounded that night and she answered. At the door was a man with a knife. He followed Janet upstairs to where Gilbert's wife was watching television. Gilbert was not then present. The intruder forced Gilbert's wife into another room, demanded money from her and then, almost immediately, shot her with a gun which Gilbert and his wife had purchased the day prior to the crime. According to Janet, she picked up the gun and shot at the assailant, who escaped.

Judge Proctor deemed it suspicious that Janet's fingerprints were not found on the murder gun. He expressed concern that there was no explanation as to how the murderer obtained possession of the gun; that while the murderer demanded money, he immediately shot the victim without any further attempt to complete a robbery; that Janet waited a substantial time before calling the police; and that Gilbert inexplicably called home at 2:00 A.M.—about an hour after the police

arrived on the scene—from his employer's home where he had spent the evening.

Judge Proctor noted that there was testimony from Gilbert's employer that Gilbert told him that he paid $5,000 to have his wife killed. There was evidence tending to corroborate this testimony from police witnesses who overheard an incriminating conversation between Gilbert and his employer while on a stakeout at the employer's home.

In completing his application to the Maryland Bar, Gilbert did not mention this civil suit despite the fact that Question 10 of the admission application required the following information:

> "a complete list of all suits in equity, actions of law, suits in bankruptcy or other statutory proceedings, matters in probate, lunacy, guardianship, and every other judicial or administrative proceedings of every nature and kind, except criminal proceedings, to which I am or have ever been a party: (If 'None' so state)."

Gilbert answered "None" to this question.

II.

Following an evidentiary hearing before an Inquiry Panel, and upon the recommendation of the Review Board, the Attorney Grievance Commission filed its petition for disciplinary action on April 9, 1985, averring that Gilbert had intentionally failed to disclose a material fact by his negative answer to Question 10 of the admission application, and that he thereby violated the previously quoted disciplinary rules. We referred the matter pursuant to Maryland Rule BV9 b to Judge Raymond G. Thieme, Jr. of the Circuit Court for Anne Arundel County. After two evidentiary hearings, Judge Thieme filed extensive factual findings, concluding that Gilbert had intentionally failed to disclose the civil suit; that the information thereby withheld was of material fact; that the Character Committee, the State Board of Law Examiners, and this Court were deliberately deprived of material information; and that Gilbert had thereby violated DR 1-101(A) and DR 1-102(A)(1) and (4).

Gilbert has taken exception to Judge Thieme's finding that he intentionally failed to disclose the *Bankers Life* litigation. Specifically, he objects to Judge Thieme's finding that he largely completed his application on May 17, 1980, and held it for three days before submitting it on May 20, 1980. He also contends that Judge Thieme could not properly find that he gave varying explanations for his failure to disclose *Bankers Life* on his application and that the language of Question 10 was clear. While Gilbert now concedes that Question 10 requires the inclusion of all civil suits, he argues that applicants might think that Question 9(c) and (d)[2] required disclosure of all lawsuits where money is sought and that Question 10 concerns only civil suits other than where money is sought. Furthermore, as evidence that he misread Question 10, Gilbert notes that there were five other civil suits that he did not list in response to that question. He insists the failure to list these suits could not have been purposeful because their disclosure would not have prejudiced his application.

At the first hearing before Judge Thieme, Gilbert said that he did not remember why he answered "none" to the application's question about involvement in civil litigation. He suggested that he misread the question, and that the haste with which he completed the application contributed to this mis-

---

[2] Question 9(c) and (d), and Gilbert's responses, were as follows:

"(c) Are there any unsatisfied judgments against you? *yes* Yes or No (which have been paid but for which I have not yet received an order of satisfication) A default judgment was entered against me in January, 1969 when I was incarcerated. I recently learned of it. I have written a letter to the clerk of the circuit court requesting that it be set aside.

"(d) Have any judgments ever been entered against you? *yes (1)* Yes or No

If so, furnish certified copies of such judgments, whether satisfied or unsatisfied, and the names and present addresses (with zip code) of the holders. The judgment was for approx. $88.05 obtained by May Department Stores (Hecht's). Their attorney is Phillip Heller Sachs, 343 North Charles St., Baltimore, Md. 21201. Order of satisfaction forthcoming, see (c) above.

reading. He claimed that he would have answered Question 10 correctly if he had not misread it. Furthermore, he maintained that he had disclosed the existence of judgments against him in answer to Question 9 of the application, and that he also revealed his involvement in "lawsuits" in the character interview. He suggested that the Character Committee had focused on his criminal record and thus precluded him from making a more detailed disclosure of his involvement in "lawsuits," specifically the *Bankers Life* case.

In his factual findings, Judge Thieme characterized the language of Question 10 as very clear. He did not believe that Gilbert completed the application in any particular hurry. He noted that Gilbert admitted that he had the application for some time and had procrastinated in filling it out. From the dates of Gilbert's signatures on the application and its addendum, Judge Thieme concluded that he completed Question 10 at least three days before submitting the application, and that this fact undermined his claim of hurried preparation.

Judge Thieme also found significant Gilbert's failure to disclose the *Bankers Life* suit at any time during his protracted admission process. While recognizing that Gilbert had mentioned "some civil suits," Judge Thieme observed that he provided no details beyond those concerning an $88 judgment contained in his answer to Question 9. Moreover, he noted that when Gilbert was asked about the reasons for the police suspecting his involvement in his wife's murder, he responded only that his in-laws had been pursuing a vendetta, failing to mention that Judge Proctor had found "overwhelming evidence" that he had caused his wife's death.

Although Judge Thieme acknowledged the concentration on Gilbert's criminal record during the admission process, he observed that Gilbert controlled the flow of information during the hearings. Furthermore, he said that the informality of the process provided ample opportunity for Gilbert to volunteer information omitted from his application.

Judge Thieme's factual findings are, or course, prima facie correct and Gilbert's exception to the intent finding will not be disturbed unless clearly erroneous. *Attorney Griev. Comm'n* v. *Kemp*, 303 Md. 664, 674, 496 A.2d 672 (1985). Based on our review of the record, we are unable to say that Judge Thieme's finding that Gilbert intentionally failed to disclose the *Bankers Life* suit was clearly erroneous. Judge Thieme clearly did not believe Gilbert's explanation for his failure to disclose *Bankers Life*. Ordinarily, the factfinder may believe or disbelieve a witness' testimony. *Gray* v. *Dep't of Correction*, 230 Md. 508, 511-12, 187 A.2d 860 (1963). Question 10 plainly asks applicants to list their involvement in civil litigation. That a law school graduate would not understand this question strains our imagination, as it did of Judge Thieme. The dates on the application do indicate, as Judge Thieme found, that Gilbert completed the application over a three-day period, not in haste as Gilbert claimed. *See In re Application of G. L. S.*, 292 Md. 378, 389, 439 A.2d 1107 (1982) (application on its face contradicted applicant's claim of hurried preparation). Furthermore, Judge Thieme did not conclude that Gilbert gave varying explanations for his failure to disclose *Bankers Life*. Rather, he characterized Gilbert's explanation as "several species of the claim that he misread question 10." And although by a footnote he took cognizance of Gilbert's testimony before the Inquiry Panel, Judge Thieme did not rely on such testimony, but rather on Gilbert's testimony at the hearing before the court. We thus find no merit in Gilbert's exceptions relating to Judge Thieme's finding of intent.

Gilbert has also excepted to Judge Thieme's conclusion that the non-disclosure was material. He argues that the information requested by Question 10 had no bearing on the principal issue of his present moral character. He suggests that the Character Committee evinced no interest in his involvement in civil litigation and thus would not have investigated the *Bankers Life* suit had it been disclosed. Further, he contends that his comment that he had been involved in "lawsuits" sufficiently alerted the Committee to the need for further inquiry.

Gilbert also argues that the *Bankers Life* suit involved the same issues as were involved in the criminal case and that by disclosing and discussing at length the indictment for the murder of his wife, he disclosed all the information that would have been available in the *Bankers Life* suit.

In rejecting these arguments, Judge Thieme said that the Character Committee had no reason to question Gilbert about his involvement in civil litigation since he answered "none" to Question 10, and only revealed the $88 judgment against him listed in Questions 9(c) and 9(d). Given the committee's close questioning of Gilbert concerning the murder charges, Judge Thieme found that his failure to disclose Judge Proctor's finding of involvement in his wife's death was of benefit to him in the character assessment process.

Nor did Judge Thieme find merit in Gilbert's contention that disclosure of the criminal indictment was tantamount to disclosure of the civil action. He said:

> "This is not true. The criminal charges against Gilbert were never tried and no evidence of his involvement in Mrs. Gilbert's death was adduced. Gilbert was free to characterize the charges against him, which he did in a very self-serving manner. The civil action, on the other hand, including an affirmative defense alleging that Gilbert caused his wife's death, was tried to a conclusion. *Bankers Life* presented evidence of Gilbert's involvement in that murder. A detailed summary of this evidence was included in Judge Proctor's opinion which concluded:
>
> > '[T]he evidence is overwhelming that Gilbert intentionally caused the death of his wife in order to reap the harvest, namely, the proceeds of these two life insurance policies. . . .'
>
> This contrasts sharply with Gilbert's evaluation of the criminal charges as the groundless products of a family vendetta or inept prosecution.
>
> "Judge Proctor's findings destroy the credence of Respondent's assertion that he had nothing to gain by not disclosing *Bankers Life* and his further assertion that the

> facts not disclosed were not material to his application. In view of the three narrow votes which preceded Respondents' admission to the Bar, this Court finds that Respondent certainly benefited from the freedom he enjoyed to characterize the charges against him without contradiction."

We have not previously construed the word "material" in the context of its usage in DR 1-101(a). In *Matter of Howe*, 257 N.W.2d 420, 422 (N.D. 1977), however, the North Dakota Supreme Court defined a material omission within the contemplation of the same disciplinary rule as one that "has the effect of inhibiting the efforts of the bar to determine an applicant's fitness to practice law."

This definition accords with judicial determinations of materiality in other contexts. For example, in ruling on a summary judgment motion, the court must determine whether the resolution of any material matter of fact may affect the outcome of the case. *King* v. *Bankerd*, 303 Md. 98, 111, 492 A.2d 608 (1985); *Lynx, Inc.* v. *Ordnance Products, Inc.*, 273 Md. 1, 8, 327 A.2d 502 (1974). Similarly, a misrepresentation or omission in an application for insurance is material if it would affect the insurer's decision about providing insurance or evaluating the risk. *Maryland Indemnity* v. *Steers*, 221 Md. 380, 385, 157 A.2d 803 (1960). In the law of evidence, materiality "is a broad concept that is generally understood to include any evidence which is reasonably capable of influencing a tribunal's decision, but it does not require that the evidence will *necessarily* do so." (Emphasis in original). *Breedon* v. *Maryland Dep't of Educ.*, 45 Md. App. 73, 84, 411 A.2d 1073 (1980). *See also Restatement of Torts* (Second) § 538(2)(a) (1976) (materiality of representation determined by the importance a reasonable person would attach to fact in determining course of action).

These standards focus on the effect of the particular fact or representation on the decision-making process. They are consistent with the *Howe* standard, which we adopt, for determining the materiality under DR 1-101(A) of an omission or false statement on a bar admission application.

We agree with Judge Thieme that the omitted information was clearly material. As he found, Gilbert's failure to disclose the *Bankers Life* suit kept highly relevant information concerning his wife's murder from the Character Committee, the Board and from us. It also enabled Gilbert to characterize the criminal charges against him in a self-serving and plausible fashion. Since the criminal charges were dismissed and expunged before the character evaluation process was initiated, the investigation's central focus was upon Gilbert's criminal convictions and the evidence that he had since been rehabilitated. That the non-disclosure of the civil suit plainly inhibited efforts to assess Gilbert's present moral character fitness to practice law is, we think, entirely plain.

Such a conclusion, Gilbert suggests, is inconsistent with *In re Application of G. L. S.*, 292 Md. 378, 439 A.2d 1107 (1982). There, the applicant for admission failed to disclose the details of his criminal conviction on his bar application. As he did list the date of the conviction, however, we found that he "provided sufficient information to alert the Committee to the need for further investigation and inquiry." *Id.* at 397, 439 A.2d 1107. Furthermore, the applicant acknowledged that the information was incomplete and he provided the details during the admission process. Unlike *G. L. S.*, Gilbert never provided the information about *Bankers Life* during the admission process. Manifestly, his comment about "lawsuits," when discussing the existence of a minor, unsatisfied judgment, did not provide any information on which to base further questions.

Gilbert's reliance on the statement in *Howe*, *supra*, 257 N.W.2d at 422, that the court would not second-guess the bar admission committee is misplaced. What the court said was that in determining materiality, it would not speculate about the course that the admission process would have actually taken had the applicant provided complete information. Thus, Gilbert's suggestion that the Character Committee would in no event have inquired into the details of *Bankers Life* had he disclosed the existence of that litigation, in effect, second-

guesses the effect of complete disclosure on the Committee and contradicts the direction in *Howe*.

III.

Gilbert also takes exception to several evidentiary rulings made by Judge Thieme. He first asserts that Judge Thieme erroneously admitted the *Bankers Life* file in evidence, contending that that litigation had no relevance to the disciplinary proceedings because Question 10 did not require the actual disclosure of the information contained in the civil case. He also claims that there was no evidence to show that his disclosure of *Bankers Life* would have caused a Character Committee or Board member to locate and read the file. The civil case file, however, demonstrates what information would have been available had Gilbert disclosed the existence of the lawsuit, as required in Question 10. Such information is obviously relevant to the determination of whether Gilbert deliberately failed to disclose a material fact during the admission process and thus bears directly on his present moral character fitness to practice law.

Gilbert next objects to Judge Thieme's hearsay exclusion of much of Milton Parker's testimony at the hearing. He urges that Parker's testimony should have been admissible to impeach testimony given in the *Bankers Life* trial. Gilbert mistakes the nature of these disciplinary proceedings. The veracity of a witness in a trial occurring sixteen years earlier was not at issue; the judgment in that case became final when Gilbert failed to appeal. Parker's proffered testimony, allegedly tending to impeach the witness, had no bearing on whether Gilbert failed to disclose material information on his bar application.

Gilbert also contends that Judge Thieme erroneously excluded testimony by Gilbert's parents that would have tended to show his lack of intent to conceal *Bankers Life*. Judge Thieme did, however, allow Gilbert's mother and father to

testify about his state of mind as he worked on his application. He excluded testimony from Gilbert's mother about her conversations with Gilbert, but permitted her to testify that Gilbert was worried about his criminal record and not his involvement in civil litigation. Judge Thieme also excluded similar testimony from Gilbert's father about Gilbert's state of mind when he was planning to return to law school in 1978. Of course, Gilbert's state of mind when he returned to law school had no relationship to his state of mind when he answered "none" to Question 10. Thus, Judge Thieme properly excluded that testimony by Respondent's father.

Gilbert also argues that his father should have been allowed to testify to his evaluation of the evidence in *Bankers Life*. As discussed above, the merits of *Bankers Life* are not at issue in these disciplinary proceedings, and the father's testimony was accordingly properly limited.

Also lacking in merit is Gilbert's contention that the finding of materiality in the disciplinary proceedings effectively convicts him of his wife's murder and thus denies him due process of law. Our determination that the non-disclosure was material relates only to Gilbert's fitness to practice law, not to his guilt or innocence.

Gilbert's assertion that laches precludes these disciplinary proceedings is equally without merit. In *Anne Arundel Co. Bar Ass'n* v. *Collins*, 272 Md. 578, 584, 325 A.2d 724 (1974), we quoted with approval from *In Re Weinstein*, 459 P.2d 548, 549 (Ore. 1969) as to the defense of laches in a disciplinary proceeding:

> '"*[T]he primary purpose of professional disciplinary proceedings is to protect the public . . .]. [I]t would not be in the public interest to dismiss the disciplinary proceedings for no reason other than the Bar's failure to prosecute them with the proper dispatch.*'" (Emphasis added in *Anne Arundel Co. Bar Ass'n* v. *Collins.)*

In addition, we noted that the party asserting laches must demonstrate prejudice because of the delay.

Gilbert claims prejudice because he can no longer remember why he answered "none" to Question 10. He concedes, however, that the Commission did not delay unduly in instituting grievance proceedings against him. Of course, laches operates to bar a claim only when a party delays in asserting a right. *See Credit Corp.* v. *Williams*, 246 Md. 575, 587, 229 A.2d 712 (1967). Thus, by Gilbert's own admission, the defense of laches has no application to his case.

IV.

Having determined that Gilbert violated DR 1-101(A) and DR 1-102(A)(1) and (4), we must determine the appropriate sanction. That no moral character qualification to practice law is more important than truthfulness and candor is well settled. *Attorney Griev. Comm'n* v. *Levitt*, 286 Md. 231, 238, 406 A.2d 1296 (1979); *In re Application of Allan S.*, 282 Md. 683, 689, 387 A.2d 271 (1978). Gilbert's deliberate failure to disclose *Bankers Life* plainly reflects on his truthfulness and candor during the application process and hence upon his present moral character fitness to practice law in this State.

We previously determined that the reckless making of a material false statement on a bar application warranted strong disciplinary action. *Attorney Griev. Comm'n* v. *Rosen*, 303 Md. 60, 492 A.2d 289 (1985). Other states have considered intentional omissions or false statements on bar applications as grounds for disbarment. *See, e.g, State Bar* v. *Langert*, 43 Cal. 2d 636, 276 P.2d 596 (1954) (disbarment for concealment of charges of misconduct in another state on bar application); *People* v. *Culpepper*, 645 P.2d 5 (Colo. 1982) (disbarment for use of false school transcripts in connection with an application); *Florida Board of Law Examiners* v. *Lerner*, 250 So. 2d 852 (Fla. 1971) (disbarment for concealment on application of charges of misconduct in another state); *Matter of Farrar*, 242 Ga. 312, 249 S.E.2d 12 (1978) (disbarment for failure to disclose a prior disbarment on bar application to another state); *In re Jordan*, 106 Ill. 2d 162, 478 N.E.2d 316 (1985) (disbarment for failure to disclose 297 parking tickets, among other omissions,

on bar application); *State* v. *Hartman*, 216 Ind. 89, 23 N.E.2d 477 (1939) (disbarment for failure to disclose on application numerous civil and criminal proceedings); *Matter of Elliot*, 268 S.C. 522, 235 S.E.2d 111 (1977) (disbarment for failure to disclose criminal record on bar application).

Similarly, a number of states have refused admission to applicants who have omitted pertinent information from their applications. *See, e.g., Application of Greenberg*, 126 Ariz. 290, 614 P.2d 832 (1980) (belated disclosure of information reflecting adversely on moral character); *Application of Walker*, 112 Ariz. 124, 539 P.2d 891 (1975), *cert. denied*, 424 U.S. 956 (1976) (failure to disclose belated draft registration); *In re Green*, 464 A.2d 881 (Del. 1983) (failure to disclose charges of misconduct in another state); *In re Beasley*, 243 Ga. 134, 252 S.E.2d 615 (1979) (omission of information about involvement in legal proceedings); *In re Ascher*, 81 Ill. 2d 485, 411 N.E.2d 1 (1980) (failure to disclose pending lawsuit); *In re Mitan*, 75 Ill. 2d 118, 387 N.E.2d 278, *cert. denied*, 444 U.S. 916 (1979) (numerous errors and omissions on application); *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975) (incomplete, inaccurate and inconsistent responses to questions about criminal activity); *Application of Jenkins*, 94 N.J. 458, 467 A.2d 1084 (1983) (failure to disclose involvement in both criminal and civil proceedings).

Gilbert relies upon *Hallinan* v. *Committee of Bar Examiners*, 65 Cal. 2d 947, 421 P.2d 76, 55 Cal. Rptr. 228 (1966) as supporting a lesser sanction than disbarment. There, the court determined that the applicant's omissions were not material. Hallinan had listed numerous arrests, but failed to include a minor conviction in England, and to list his status as an intervenor in a will contest. In light of Hallinan's actual disclosures and the court's characterization of his offenses, it concluded that the non-disclosures had no effect on the determination of Hallinan's fitness to practice law. 421 P.2d at 94-95.

Gilbert also relies on *In re Hadzi-Antich*, 497 A.2d 1062 (D.C. 1985), a case in which the court ordered a public reprimand for an attorney who had misrepresented his credentials

on an employment application. Unlike either Hallinan's or Hadzi-Antich's misconduct, Gilbert deliberately failed to disclose vitally significant material information on his bar application that he knew raised very serious questions about his fitness to practice law.

Not every purposefully dishonest misrepresentation on a bar application may warrant the extreme sanction of disbarment. In this case, however, considering the gravity of Gilbert's misconduct, and the absence of any compelling extenuating circumstances, we conclude that disbarment is the appropriate sanction.[3]

---

[3] The United States District Court for the District of Maryland, on December 6, 1984, refused to admit Gilbert to practice in that court. Gilbert had applied to that court for admission on August 13, 1984. Shortly before a scheduled hearing before the District Court on Gilbert's application, the court was informed of the non-disclosure of the *Bankers Life* litigation and of Judge Proctor's findings. At the ensuing hearing, Gilbert contended that the omission was unintended that he had no reason to conceal the existence of the civil suit; that knowledge of the civil suit would not have changed the outcome of the character investigation and that the unintended omission had no bearing on his character.

In denying Gilbert's admission, the court noted that the application clearly asked for "all suits" to which Gilbert had been a party and that, while the criminal case against him had been dismissed without findings being made, Judge Proctor in the civil case had made extensive findings as to Gilbert's role in his wife's death. The court recognized that neither the State Board of Law Examiners nor this Court knew of Judge Proctor's findings. It opined that had such information been disclosed, it may have affected the outcome of the investigation. The District Court concluded that Gilbert's omission of the civil suit was "not unintentional" and that "the omission evidences incomplete rehabilitation and lack of good private and public character." The court further noted its concern over Judge Proctor's findings since "[p]articipation in the murder of one's wife to collect insurance is clearly one of the most reprehensible acts imaginable, one far more serious than the crimes for which James G. has actually been convicted." *See* In the Matter of James G., Misc. No. 2270, filed

IT IS SO ORDERED; RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING THE COSTS OF TRANSCRIPTS, PURSUANT TO MARYLAND RULE BV15 c FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST JAMES HENRY GILBERT.

December 6, 1984 (unreported).

APPENDIX C

In The Court Of Appeals Of Maryland

Misc. Docket No. 1 (Adv.)
September Term, 1983

IN THE MATTER OF THE APPLICATION OF JAMES G. FOR ADMISSION TO THE BAR OF MARYLAND

MURPHY, C.J., ELDRIDGE, COLE, RODOWSKY, COUCH, MCAULIFFE, ADKINS, JJ.

Opinion by Murphy, C.J.

Opinion by Murphy, C.J.
Smith and Rodowsky, JJ., dissent.

Filed August 4, 1983

Whether the applicant in this case currently possesses the requisite moral character that would justify his admission to the Bar of Maryland is the issue before us for determination.

Because of applicant's past criminal record, the Character Committee for the Third Judicial Circuit held a hearing on October 21, 1980, pursuant to Rule 4 of the Rules Governing Admission to the Bar of Maryland. The Committee recommended unanimously to the State Board of Law Examiners that the applicant not be admitted to the Maryland Bar. The Board subsequently conducted an evidentiary hearing on November 2, 1981. By a divided vote (3-2), the Board recommended to the Court that the applicant be admitted. We considered the matter at a hearing at which the applicant appeared

and spoke on his own behalf. Because we conclude that the evidence is clear and convincing that the applicant has been completely rehabilitated and possesses present good moral character, we shall order his admission.

The applicant resided with his family in Chevy Chase, Maryland, for the first fifteen years of his life, then in Bethesda for four years, after which he moved to Baltimore in 1964, when the applicant was nineteen years of age. Although reared under relatively favorable economic conditions in affluent residential areas, the quality of applicant's home life was far from ideal. His parents, both of whom were attorneys, argued constantly, frequently escalating to a point of physical confrontation. Eventually, during 1959, there was a separation, apparently final, although no divorce action was initiated. Applicant, by his own choice, resided in his father's home until, in 1964, at age nineteen, he married.

Applicant's marital experiences have, similarly, been less than storybook in character. A Mongoloid son was born in October, 1964, of his first marriage. His wife was murdered in 1967, during an apparent attempted robbery of the tourist home which they managed. The applicant's son ultimately was committed to institutional care as James was unable to provide proper care for him. The applicant remarried and his established a positive relationship with a stepson, although James and his second wife are currently separated.

During the six-month period from April to October, 1967, the applicant became involved in a series of bizarre criminal episodes which resulted in charges against him of conspiring to commit forgery, forgery and uttering, murder and accessory to commit murder, homicide and assault. The applicant pled *nolo contendere* to the charge of conspiracy to commit forgery of a bank check drawn by his mother, and, in September, 1968, he received a suspended sentence. He was found guilty of six counts of forgery and uttering arising out of the use of a misapporpriated credit card and received a sentence of twenty months to five years incarceration. Full restitution was made

prior to his arrest for this offense. Although arrested for murder and as an accessory to commit murder in the matter of the death of his first wife, the charges against James were dismissed without trial. Arrested on charges of homicide and assault arising out of a Halloween night stabbing of a gas station attendant by one of his companions, James was found not guilty. The applicant subsequently offered a plea of *nolo contendere* to simple assault, for which he received a suspended sentence.

The Halloween night stabbing incident occurred just after the applicant enrolled at the University of Baltimore Law School. As a result of his incarceration without bond until December, 1967, he was unable to continue at the law school. As a result of his conviction for forgery and uttering, James was incarcerated for twenty-one months from November, 1970, to August, 1972. The applicant earned a work-related commendation from prison officials during his incarceration and, from the time of his parole in August, 1972, until the present, the applicant has not been involved in any criminal activity.

James has worked continuously at a variety of jobs while simultaneously attending college and law school. He graduated from the University of Baltimore Law School in 1980, applied for admission to the Bar of Maryland on May 17, 1980, and sat for and successfully passed the July, 1980, bar examination. He applied for admission to the Bar of the District of Columbia and was admitted in that jurisdiction after successfully passing the February, 1981, Bar examination. Prior to admission, James' present moral character fitness was favorably considered by the District of Columbia authorities. James has been actively practicing in that jurisdiction without incident for over two years since his admission.

We have said that no litmus test exists by which to determine whether an applicant possesses the good moral character requisite for admission to the Bar of Maryland. *In re Application of A.T.*, 286 Md. 507, 408 A.2d 1023 (1979); *In re Application of David H.*, 283 Md. 632, 392 A.2d 83 (1978). We summarized the

analysis which must be undertaken in such a determination in *In re Application of Allan S.*, 282 Md. 683, 387 A.2d 271 (1978). In that case, the applicant for admission had been arrested twice, once in 1966 for stealing a bottle of rum and again in 1971 for stealing a tape measure. After a hearing, the Character Committee concluded that the applicant had met the burden of proving that he was presently possessed of good moral character and recommended that he be admitted to the Bar of Maryland. The Board of Law Examiners, however, came to the contrary conclusion following a hearing and recommended that he not be admitted.

In the course of our determination that the applicant possessed the requisite moral character fitness for admission we said:

> "Where, as here, an applicant for admission to the Bar is shown to have committed a crime, the nature of the offense must be taken into consideration in determining whether his present moral character is good. . . .
>
> Although a prior conviction is not conclusive of a lack of present good moral character, particularly where the offense occurred a number of years previous to the applicant's request for admission, it adds to his burden of establishing present good character by requiring convincing proof of his full and complete rehabilitation . . . . Thus, a prior conviction must be taken into account in the overall measurement of character and considered in connection with other evidence of subsequent rehabilitation and present moral character . . . . It is not without significance in this regard, as bearing upon moral fitness, that an applicant for admission to the bar refuses to admit his criminal conduct. . . .
>
> The ultimate test of present moral character applicable to original admissions to the Bar, is whether, viewing the applicant's character in the period subsequent to his misconduct, he has so convincingly rehabilitated himself that it is proper that he become a member of a profession which must stand free from all suspicion . . . . That the absence of good moral character in the past is secondary to the existence of good moral character in the present is a car-

dinal principle in considering applications for original admission to the Bar." *Id.* at 690. (Citations omitted).

In applying these principles to the facts in *Allan S.*, we said:

> "[A]pplicant's first offense occurred in 1966, eleven years prior to the hearing before the Board; the 1971 offense occurred almost seven years prior to that hearing. While there can be no doubt that each of these offenses, though petty in nature, involved moral turpitude, the applicant readily admitted that he committed the crimes even though he was never tried or convicted of either of them. In this respect, he was most candid with the Board and we cannot agree, in view of the record in this case, that the applicant did not admit that his acts were morally wrong and indefensible. On the contrary, he did so repeatedly, both before the Character Committee and th Board, and we are satisfied that he is deeply distressed that he participated in such conduct.
>
> In undertaking to prove his good moral character, the applicant was largely limited to the production of opinion evidence by those who know him. And letters attesting to his good character are entitled to respectful consideration . . . . The record before us contains letters from a number of members of the legal and lay community, all to the effect that the applicant presently possesses the good moral character required of a member of the Maryland Bar. One letter, from a former Securities Commissioner of Maryland, for whom the applicant has worked as a law clerk, contains a particularly strong endorsement of his present good moral character and he testified to the same effect at the hearing. Other similarly impressive expressions of unqualified trust in applicant's moral character are also in evidence.
>
> There was no evidence in the record even remotely suggesting that the applicant has been involved in any misconduct in the years following the 1971 theft offense. The inference to be drawn is that during this interim period there has been a decided improvement in the applicant's conduct and behavior." *Id.* at 691-92. (Citations omitted).

On the basis of the evidence presented, we held that Allan S. met the burden of proving his rehabilitation and present good moral character and we admitted him to the Bar of Maryland.

The principles enunciated in *Allan S.* have been applied in subsequent cases; *see, for example, In re Application of G. L. S.*, 292 Md. 378, 439 A.2d 1107 (1982); *In re Application of A.T.*, 286 Md. 507, 408 A.2d 1023 (1979); *In re Application of David H.*, 283 Md. 632, 392 A.2d 83 (1978). In arriving at our own evaluation of the applicant's present moral character, we note that his criminal offenses all occurred within a six-month period in 1967, sixteen years ago, when the applicant was twenty-one years of age. A substantial and significant amount of time has thus passed since the criminal conduct occurred.

There can be no doubt that the applicant's criminal transgressions were serious and involved moral turpitude. The applicant has readily admitted his responsibility for and his participation in the crimes in which he was involved and his remorse is fully evident and genuine.

There are numerous letters in the record from members of the legal and law community which evidence James' rehabilitation, all attesting to the fact that he is presently possessed of good moral character. Business associates and former employers, in particular, have high praise for the applicant and hold him in high esteem. A member of the District of Columbia Bar with whom the applicant shared office space testified before the Board of Law Examiners in regard to the applicant's trustworthiness:

> "Q. Do you personally trust him?
>
> "A. Definitely, I trust him with anything he desires. He has the use of my office, all the equipment. There's money laying around the office, bonds. I have in my safe certificates of deposit and what have you. He has access to it, goes in the safe. He has no problem there whatsoever, I trust him implicitly, yes."

In addition, the record indicates that the applicant has been ethically discharging his duties as an attorney and member of the District of Columbia Bar for over two years.

Giving due consideration to the nature of the offenses for which the applicant was *convicted*, the time of their commis-

sion, the circumstances involved, the fact that the burden rests upon the applicant to prove his good moral character, and, most importantly, the convincing evidence of the applicant's rehabilitation, we think he has established that he has the present good moral character to permit him to be granted the privilege of admission to the Bar of Maryland.

IT IS SO ORDERED.

APPENDIX D

TESTIMONY OF MILTON PARKER

MR. GROSSMAN. Objection.

COURT: Sustain the objection.

Q. You stated it was the policy that the person . . . if a district manager could not hack it to get out, is that correct?

A. That is correct.

Q. How familiar were you with which district managers were hacking it, so to speak, and which ones were not?

MR. GROSSMAN: Objection.

COURT: Sustain the objection.

MR. GILBERT: Your Honor, I would like to proffer. . .

COURT: You can make whatever proffer you wish.

MR. GILBERT: I would like to proffer what Mr. Parker would say if permitted, or else. . .

COURT: Make whatever proffer you want.

MR. GILBERT: Your Honor, I would proffer that Mr. Parker would testify that in all his conversations with Mr. McColligan, Mr. McColligan indicated that I was innocent, that he did not suspect me in the least, and at this conversation with Mr. Harold Dickerson, the regional manager, that Mr. Dickerson asked Mr. McColligan "seven thousand ways" if there was any possible involvement, or anything, and that Mr. McColligan . . . of either me or him, and that Mr. McColligan denied it. That there was then a period of three of four months later that there was another conversation and that at this conversation in September of 1967 at which Mr. Parker was . . . was there that a lawyer out of Chicago put extreme pressure on Mr. McColligan, that Mr. McColligan then changed his testimony and that Mr., that this individual, this lawyer, came back to the hotel, had a few drinks under his belt as Mr. Parker testified, and than said "Well, I just saved MacArthur a hun-

dred thousand dollars." Also, that it would be Mr. Parker's opinion that Mr. McColligan did not have . . . had very poor production, yet, was kept on and it was . . . that there were many comments made and that it was his opinion that Bankers must have gotten to him and that the reason that he was there was because of his testimony with Bankers Life . . . for Bankers Life and Casualty. Your Honor, we would submit that because that could have been brought up in the Character Committee hearing, what were this brought up . . . that were the fact of the case brought up, that Mr. Parker could have been brought in and that this goes to the strength of the . . . or in this case the lack of strength of Mrs. McColligan's testimony.

COURT: Fine. You've made your proffer.

MR. GILBERT: Fine.

COURT: Alright. Ask your next question.

Q. For a . . . for a whole life policy what would be the determining factors in figuring out the amount of insurance that a person should get?